

AN ACT

H
B
1
8
7
P
a
g
e
1

RELATING TO TELECOMMUNICATIONS ACCESS; TRANSFERRING THE
ADMINISTRATION OF THE TELECOMMUNICATIONS ACCESS ACT FROM THE
GENERAL SERVICES DEPARTMENT TO THE COMMISSION FOR DEAF AND
HARD-OF-HEARING PERSONS; PROVIDING THAT THE
TELECOMMUNICATIONS ACCESS FUND MAY BE APPROPRIATED FOR THE
EXPENSES OF THE COMMISSION FOR DEAF AND HARD-OF-HEARING
PERSONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 63-9F-1 NMSA 1978 (being Laws 1993, Chapter 54,
Section 1) is amended to read:

"63-9F-1. SHORT TITLE.--Chapter 63, Article 9F NMSA 1978 may be cited
as the "Telecommunications Access Act"."

Section 2. Section 63-9F-3 NMSA 1978 (being Laws 1993, Chapter 54,
Section 3, as amended) is amended to read:

"63-9F-3. DEFINITIONS.--As used in the Telecommunications Access Act:

A. "commission" means the commission for deaf and hard-of-hearing
persons;

B. "communications assistant" means an individual who translates
conversation from text to voice and from voice to text between two end users of a
telecommunications service;

C. "impaired" means having an impairment of or deficit in the ability
to hear or speak, or both;

D. "intrastate telephone services" means all charges for access lines, special services and intrastate toll services, including all calls originating and terminating in the state;

E. "specialized telecommunications equipment" means devices that enable or assist an impaired individual to communicate with another individual using the telephone network;

F. "telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity that provides public telecommunications services, and includes cellular service companies as defined in Subsection B of Section 63-9B-3 NMSA 1978; and

G. "telecommunications relay system" means a statewide telecommunications system through which an impaired individual using specialized telecommunications equipment is able to send or receive messages to and from an individual who is not impaired and whose telephone is not equipped with specialized telecommunications equipment and through which the unimpaired individual is able, by using voice communications, to send and receive messages to and from an impaired person."

Section 3. Section 63-9F-6 NMSA 1978 (being Laws 1993, Chapter 54, Section 6) is amended to read:

"63-9F-6. TELECOMMUNICATIONS RELAY SYSTEM.--

A. The commission shall administer a telecommunications relay system that enables impaired individuals to communicate with unimpaired individuals.

B. The commission shall invite proposals or bids, or both, from

H
B
1
8
7
P
a
g
e
2

telecommunications companies to design and implement a telecommunications relay system. The commission shall comply with the provisions of the Procurement Code in contracting for the services and property required. The commission shall consider the factors of price and the interest of the community of impaired individuals in having access to a high quality and technologically advanced system. New Mexico residency shall be given a weight of five percent of the total weight of all evaluation factors in a proposal evaluation. Any business that qualifies as a "resident business" as defined in Section 13-1-21 NMSA 1978 shall receive a five percent preference. In the procurement process, the commission shall request and consider the recommendations of the communications assistants who have provided the voice relay service used in the state.

H
B
1
8
7
P
a
g
e
3

C. If the commission determines that no proposal or bid is acceptable after review, the commission may provide the telecommunications relay system.

D. The telecommunications relay system shall:

(1) be available statewide for operation twenty-four hours a day every day of the year;

(2) relay all messages promptly and accurately;

(3) protect and maintain the privacy of individuals using the system;

(4) preserve the confidentiality of all telephone communications; and

(5) conform to all applicable standards established by state and federal laws and regulations adopted pursuant to those laws."

Section 4. Section 63-9F-8 NMSA 1978 (being Laws 1993, Chapter 54,
Section 8, as amended) is amended to read:

"63-9F-8. COMMISSION DUTIES--POWER TO AUDIT.--

A. The commission shall perform all actions necessary to carry out
the provisions of the Telecommunications Access Act, including;

(1) promulgating and administering such policies, procedures
and rules as are necessary to comply with the purpose of that act and to ensure that
the specialized telecommunications equipment program and the relay system are in
compliance with the applicable state and federal laws and rules adopted pursuant to
those laws;

(2) obtaining certification from the federal communications
commission that the telecommunications relay system is in compliance with
applicable federal rules;

(3) making expenditures for the specialized
telecommunications equipment program and the telecommunications relay system;

(4) ensuring the quality of the telecommunications relay
system and the satisfaction of its users;

(5) identifying the need for specialized telecommunications
equipment by impaired individuals;

(6) identifying the problems that impaired individuals have in
acquiring specialized telecommunications equipment; and

(7) providing funding for the specialized telecommunications
equipment program.

B. The commission may require an annual audit of each

H
B
1
8
7
P
a
g
e
4

telecommunications company participating in the telecommunications relay system to account for all surcharges billed and collected pursuant to the Telecommunications Access Act. Audits conducted pursuant to this subsection shall be at the expense of the requesting agency."

Section 5. Section 63-9F-9 NMSA 1978 (being Laws 1993, Chapter 54, Section 9) is amended to read:

"63-9F-9. LIMIT ON LIABILITY.--The commission and the provider of the telecommunications relay system and their employees shall not be liable for any claims, actions, damages or causes of action arising out of or resulting from the establishment, participation in or operation of the telecommunications relay system except for gross negligence or intentional acts."

Section 6. Section 63-9F-11 NMSA 1978 (being Laws 1993, Chapter 54, Section 11, as amended) is amended to read:

"63-9F-11. IMPOSITION OF SURCHARGE.--

A. A telecommunications relay service surcharge of thirty-three hundredths percent is imposed on the gross amount paid by customers for:

(1) intrastate telephone services, other than mobile telecommunications services, provided in this state; and

(2) intrastate mobile telecommunications services that originate and terminate in the same state, regardless of where the mobile telecommunications services originate, terminate or pass through, provided by home service providers to customers whose place of primary use is in New Mexico.

B. The telecommunications relay service surcharge shall be included on the monthly bill of each customer of a local exchange company or other

telecommunications company providing intrastate telephone services or intrastate mobile telecommunications services and paid at the time of payment of the monthly bill. Receipts from selling a service to any other telecommunications company or provider for resale shall not be subject to the surcharge. The customer shall be liable for the payment of this surcharge to the local exchange company or other telecommunications company providing intrastate telephone services to the customer. For the purposes of Subsections A and B of this section, "home service provider", "mobile telecommunications services" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act.

H
B
1
8
7
P
a
g
e
6

C. A telecommunications company providing intrastate telephone services shall be responsible for assessing, collecting and remitting the telecommunications relay service surcharge to the taxation and revenue department. The amount of the telecommunications relay service surcharge collected by a telecommunications company shall be remitted monthly to the taxation and revenue department, on or before the twenty-fifth of the month following collection, which shall administer and enforce the collection of the surcharge pursuant to the provisions of the Tax Administration Act.

D. The taxation and revenue department shall remit to the telecommunications access fund the amount of the telecommunications relay service surcharge collected less any amount deducted pursuant to the provisions of Subsection E of this section. Transfer of the net receipts from the surcharge to the telecommunications access fund shall be made within the month following the month in which the surcharge is collected.

E. The taxation and revenue department may deduct an amount not

to exceed three percent of the telecommunications relay service surcharge collected as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the general fund each month.

H
B
1
8
7
P
a
9
e
7

F. The commission shall report to the revenue stabilization and tax policy committee annually by September 30 the following information with respect to the prior fiscal year:

- (1) the amount and source of revenue received by the telecommunications access fund;
 - (2) the amount and category of expenditures from the fund;
- and
- (3) the balance of the fund on that June 30."

Section 7. Section 63-9F-12 NMSA 1978 (being Laws 1993, Chapter 54, Section 12) is amended to read:

"63-9F-12. TELECOMMUNICATIONS ACCESS FUND--ESTABLISHED.--
There is created in the state treasury the "telecommunications access fund". Money appropriated to the fund or accruing to it through gifts, grants, fees, surcharges, penalties or bequests shall be delivered to the state treasurer for deposit in the fund.
The fund shall be invested as other state funds are invested. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission. The commission shall administer the fund. Money in the fund is appropriated to the commission for the purpose of carrying out the provisions of the Telecommunications Access Act. The commission may request the state budget division of the department of finance and administration to approve the expenditure

of funds deposited in the telecommunications access fund for the purpose of defraying salary and other necessary expenses incurred by the commission in the administration of the provisions of the Telecommunications Access Act. The state budget division may approve the expenditure of not more than ten percent of the amount deposited in the telecommunications access fund during any fiscal year for expenses incurred by the commission in administering that act. In addition, money in the fund shall be available for appropriation by the legislature to the commission for the performance of its duties pursuant to Chapter 28, Article 11B NMSA 1978. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert."

H
B
1
8
7
P
a
g
e
8

Section 8. TEMPORARY PROVISION--FISCAL YEAR 2005

EXPENDITURES.--Notwithstanding the provisions of Section 63-9F-12 NMSA 1978, money in the telecommunications access fund may be appropriated by the legislature to the commission for deaf and hard-of-hearing persons for the commission's operating expenses during fiscal year 2005.

Section 9. TEMPORARY PROVISION--TRANSFER.--On the effective date of this act:

A. all records, equipment, supplies and other property of the general services department relating to the department's duties pursuant to the Telecommunications Access Act shall be transferred to the commission for deaf and hard-of-hearing persons; and

B. all contracts of the general services department relating to the department's duties pursuant to the Telecommunications Access Act shall be binding on the commission for deaf and hard-of-hearing persons.

Section 10. REPEAL.--Sections 63-9F-5 and 63-9F-7 NMSA 1978 (being
Laws 1993, Chapter 54, Sections 5 and 7, as amended) are repealed.

Section 11. EFFECTIVE DATE.--

A. Upon the prior approval by the secretary of finance and
administration of a plan prepared by the commission for deaf and hard-of-hearing
persons for carrying out the provisions of the Telecommunications Access Act, the
effective date of the provisions of Sections 1 through 7, 9 and 10 of this act is July 1,
2005.

B. If, before July 1, 2005, the plan provided for in Subsection A of
this section is not approved, the effective date of the provisions of Sections 1
through 7, 9 and 10 of this act is July 1, 2006.

H
B
1
8
7
P
a
g
e
9